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October 6, 1993

FCC - MAIL ROOM

Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, DC 20554

Re: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266.

Dear Mr. Caton:

Pursuant to 47 C.F.R. §1.1206(1), this letter is submitted to inform you of a written ex parte presentation made on behalf of the Center for Media Education, Association of Independent Video and Filmmakers, National Association of Artists' Organizations and National Alliance for Media Arts and Culture regarding the parties Petition for Reconsideration filed in the cable television rulemaking proceeding, Docket No. 92-266.

The ex parte presentation was sent by mail to the following people on October 6, 1993: (1) Lisa Smith, Commissioner Barrett's office; (2) Maureen O'Connell, Chairman Quello's office; and (3) Karen Kosar. Two copies of the ex parte presentation are attached for inclusion in the public record.

Sincerely,



Jeffrey Chester
Executive Director

JC/el

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**Cable Leased Access for Non-Profits
Summary of Issues**

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Background

In the 1984 Cable Act, Congress required cable operators to lease a certain number of channels to non-affiliated entities, including non-profit organizations. The purpose of the requirement was to expand the number of independent editorial voices on cable systems--where First Amendment decisions would otherwise be the monopoly preserve of the cable operator. Congress left rate setting up to cable operators, concluding that were it to establish a single rate for leased access:

a price might be set which would render it impossible for certain classes of cable services, such as those offered by not-for-profit entities, to have any reasonable expectation of obtaining leased access to a cable system. 1984 House Rep. at 47.

Congress found that leased access channels remained largely unused, however, because cable operators established unreasonable prices and conditions for use. Congress addressed this problem in the 1992 Cable Act by directing the FCC to establish "reasonable" rates, terms, and conditions.

Late last year, the FCC requested comments on how it should implement the leased access provisions of the 1992 Cable Act. The Center for Media Education, the US Catholic Conference, the National League of Cities, the US Conference of Mayors, public broadcasters, many other non-profit groups, and individuals urged the Commission to establish special reduced rates for non-profit programmers.

FCC's Rules for Leased Access

In its Report and Order released in May 1993, the FCC established three categories for cable leased access rates: 1.) pay and pay-per-view; 2.) home shopping; and 3.) all others. "Reasonable" rate maximums were defined as the highest implicit rate charged to any unaffiliated programmer within each category. While agreeing that non-profits would contribute to the diversity intended by Congress, the FCC concluded that lower rates for non-profits were unnecessary:

Our rules, we believe, will define reasonable rates for potential new, not-for-profit programmers that will be lower than those for most, if not all, commercial programmers. We expect that these rates should generally be the lowest maximum rate of any potential leased access programmers on any system or will, at any rate, be sufficiently low as to attract potential not-for-profit programmers. (paragraph 526).

CME's Petition for Reconsideration

In seeking reconsideration, CME pointed out that there is no basis in the record for the conclusion that the rates established by the FCC's rules will be affordable for non-profit programmers.

- o The rates will not be lower for non-profits than for other programmers. The FCC's decision requires non-profit entities to pay the same lease rate as commercial networks such as ESPN or the USA Network. In addition, the "all other" rates could be even higher than the rates for home shopping channels.
- o The rates are not sufficiently low to attract potential non-profit programmers. For example, using the FCC's estimate of .50/subscriber/month for leasing under its new rules, it would cost around \$11 million per year for a community college to serve all the cable households in the Philadelphia metropolitan area. To lease a national non-profit channel under the FCC formula would cost between \$300 to \$400 million per year. Comparing these figures to the entire annual authorization for the Public Telecommunications Facilities Program (\$42 million), clearly shows that the rates resulting from the FCC rules would not be affordable for non-profits.
- o Use of implicit rates is unsound because such rates will reflect the monopoly power of cable operators. Use of the highest implicit rate is particularly objectionable because it forces new entrants to pay as much as the highest rate derived from established networks, thus, deterring competition and diversity.

Thus, on reconsideration, CME requests that the FCC adopt two policies to assist nonprofit entities in leasing cable channels:

- o a formula for low rates, i.e., .01 cent per subscriber for month or 3% of the channel's gross revenues derived from carriage, whichever is greater;
- o a three-year set-aside of a portion of each system's leased channel capacity so that not all channels will be immediately absorbed by commercial users.



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